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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,388	09/25/2003	Michael S. Brunner	18731	4250
23556 7590 09/14/2007 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER MERCIER, MELISSA S	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/671,388	Applicant(s) BRUNNER, MICHAEL S.	
	Examiner Melissa S. Mercier	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 10 and 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

Receipt of Applicants Remarks and Amended Claims filed on July 16, 2007 is acknowledged. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application. Claims 1-22 are pending in this application. Claims 6-7, 10, 13-22 remain withdrawn from consideration. Claims 1-5, 8-9, and 11-12 remain under prosecution in this application. It is noted that applicant has not indicated in the claim set that claims 6-7, 10, and 13-14 have been withdrawn from consideration.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 8-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton (US Patent 2,002,144) in view of Wortzman (US Patent 4,820,508) and further in view of Snyder (US Patent 2,131,077).

Heaton discloses an applicator adapted for mounting on a person's finger for the use in the application of a cosmetic composition (column 1, lines 4-9). Figure 1 illustrates the use of the applicator to apply rouge to person's lips. The finger cot is formed of soft rubber or the like (column 1, lines 46-48). Answers.com defines elastic to include rubber. Heaton discloses the desire to have the applicator fit snugly. The outer

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surface portions of the applicator, which are to be applied to the rough, would be roughened slightly rather than smooth (column 2, lines 44-48).

Heaton does not disclose a particular lip care formulation or the lip care formulation being deposited on the finger applicator.

Wortzman discloses a skin protective composition suitable for application as a lip balm product (column 5, lines 23-26) comprising oxybenzone and padimate O (column 6, lines 23-46) and dimethicone (Example 2-3).

Snyder discloses "a device for spreading a substance on a surface, such as lipstick on the lips and does not merely force the substance over the surface, and in which the surface of the device is such that it takes up and retains surplus material, reserving it for future use" (column 1, lines 1-10). Additionally, the device has a "surface of such a texture that it may be impregnated with lipstick material" (column 1, lines 12-15).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used the lip balm composition taught by Wortzman with the devices for applying a lip stick taught by Heaton and Snyder in order to spread a substance on a surface, such as lipstick on the lips, which massages the substance into or upon the surface (Snyder, column 1, lines 1-11) and to provide the application of a cosmetic substance to the face whereby to keep the finger clean of the applied substance and at the same time to protect the face from infection from the finger (Heaton, column 1, lines 4-10). One of ordinary skill in the art would have a reasonable

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expectation of success since Heaton and Snyder disclose the similar devices for the application of a lipstick composition.

Response to Arguments

Applicant's arguments with respect to claims 1-5, 8-9 and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowable. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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